

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 489 of 1984

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

SHREE BILESHWAR KHAND UDYOG KHEDUT SAHAKARI MANDLI
LTD & ANR.

Versus

STATE OF GUJARAT & ANR.

Appearance:

MR KAUSHAL THAKER for the Petitioners

MR NIGAM SHUKLA for the Respondents.

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 20/08/96

ORAL JUDGEMENT

1. The petitioner no.1 is a registered co-operative Society and the petitioner no.2 is one of its Director and share holder. The petitioner no.1 Society had a plant for crushing sugar-cane. In the year 1961-62, the capacity of the plant of the petitioner society for crushing sugar-cane was of 1000 tons per day. In the year 1965-66, the crushing capacity of the plant of the

petitioner of sugar-cane increased to 1500 tons per day. In the year 1968, the Government of India granted licence under the Industries (Development and Regulation) Act, 1951 to the petitioner for further capacity of sugar-cane crushing from 1500 tons per day to 2600 tons per day. The Bombay Electricity Duty Act, 1958 (hereinafter referred to as the Act, 1958) provides for the levy of a duty on consumption of electricity energy in the State of Bombay as applicable to the State of Gujarat. This Act, 1958 has been amended in the year 1979 and sec. 3(ii)(a) has been inserted by Act 14 of 1979. The provisions of the Act, 1958 as amended in the year 1979 which are relevant for deciding the controversy raised in this writ petitions are extracted as below:

- 3(ii)(a) in the case of an industrial undertaking which generates energy for its own use, ten years from the date of the commencement of the Bombay Electricity Duty (Gujarat Second Amendment) Act, 1961, (hereinafter referred to as "the commencement date") or the date of starting the generation of such energy, whichever is later;
- (b) in the case of a new industrial undertaking established on or after 1st May, 1960, which does not generate energy for its own use, five years from the commencement date or the date on which the industrial undertaking commences for the first time manufacture or - production of goods, whichever is later;

Provided that no industrial undertaking shall be entitled to exemption from payment of electricity duty under this clause, unless it has obtained a certificate regarding eligibility for such exemption in prescribed form by making an application therefor in prescribed form and within prescribed period to such officer as the State Government may, by notification in the Official Gazette, specify.

Explanation 1: (For the purpose of clause (vii) of this sub-section and sub-section(2A)-)

- (i) "an industrial undertaking" means an industrial undertaking which manufactures or produces goods for sale or use in the manufacture or production of other goods but does not include an undertaking which manufactures or produces any kind of food and drinks, meant ordinarily for consumption on the premises of the undertaking; and

- (ii) "a new industrial undertaking" means any such industrial undertaking which-
- (a) is not formed by the splitting up or the reconstruction of a business or undertaking already in existence in the State; or
- (b) is not formed by transfer to a new business of undertaking of a building machinery or plant previously used in the State for any industrial purpose, of such value in relation to total investments, as the State Government may, by notification in the official Gazette, specify; or
- (c) is not an expansion of the existing business or undertaking in the State.

Explanation 2:- For the purpose of Explanation I, "premises of the undertaking" includes all premises which are intended for being used for consumption of food and drinks.

2(2A)(a) where an industrial undertaking has, by installing an additional generating set started generation of additional energy for its own use, at any time, during ten years before the commencement of the Bombay Electricity Duty (Gujarat Amendment) Act, 1979 (hereinafter in this sub-section referred to as "the commencement") - electricity duty shall not be leviable on such units of the additional energy so generated as are consumed for motive power and lighting in respect of premises used by the industrial undertaking purpose, until the expiry of such - period after the commencement as would together with the period from the date of starting the generation not exceed ten years.

(b) Where an industrial undertaking, by installing, an additional generating set, starts generation of additional energy for its own use, at any time on or after the commencement, electricity duty shall not be leviable on such units of additional energy so generated as are consumed for motive power and lighting in respect of premises used by the industrial undertaking for industrial purpose, until the expiry of ten years from the date of starting the generation of such additional energy;

Provided that no industrial undertaking shall be

entitled to exemption from payment of electricity duty under this sub-section, unless it has obtained a certificate regarding eligibility for such exemption in prescribed form by making an application therefor in prescribed form and with prescribed period to such officer as the State Government may, by notification in the Official Gazette, specify.

Explanation- For the purpose of this sub-section-

- (a) where any generating set existing at the time of installation of the additional generating set is at any time not operated either wholly or partly, the total units of energy which the existing generating set is capable of generating shall be excluded from the units of the additional energy generated and consumed;
- (b) where any generating set existing at the time of installation of the - additional generating set is disposed of, the total units of energy which the existing generating set so disposed of was capable of generating shall be excluded from the units of the additional energy generated and consumed).

The petitioner installed the necessary equipment for generating the electricity for its own use for crushing of the sugar-cane. The petitioner society was granted exemption under the provisions of the Act, 1958 for the payment of electricity duty for ten years with effect from 1-1-1962. The petitioner, as stated earlier, expanded its sugar-cane crushing capacity, and as such, it has also to increase its electricity generating capacity. In the year 1965-66 on account of this expansion, the petitioner society had one more Turbo set of 900 to 1000 KW which as per the petitioner's case was commissioned in the year 1966-67. The crushing capacity of the sugar-cane was raised to 2600 tons per day in the year 1968, and as such, the petitioner had to arrange for one more Turbo set of the capacity of 205 MW. For that the petitioner society placed an order with Bharat Heavy Electricals Limited, Hyderabad. The petitioner has stated that the set was installed and commissioned in the year 1971. The petitioner to claim the exemption of the electricity duty, on installing of additional generating sets from 1st January, 1971 to 31st December, 1980 submitted an application to the respondent no.2 on 4th December, 1983 requesting the exemption of electricity duty from 1-1-1971 on energy generated for its own use. The respondent no.2 under its letter dated 20th November,

1974 demanded from the petitioner further more details and the information. It has further been pointed out by the respondent no.2 that in view of the notification dated 19th September, 1969 of the Government, it is not possible for it to grant exemption. The petitioner society on 10th December, 1974, wrote a letter to respondent no.1 for grant of the exemption for payment of electricity duty for five years from 1-1-1972. The respondent no.1 under its letter dated 25th September, 1976 requested the petitioner society to furnish the information for obtaining the exemption from payment of electricity duty on motive power. The petitioner replied to the said letter of the respondent no.1 under its letter dated 29th May, 1976. On 18th June, 1976, the petitioner wrote another letter to the respondent no.1 for grant of the exemption from the payment of the electricity duty on motive power on the ground that the petitioner society has created substantial expansion in the plant. On 16th April, 1979, the Act, 1958 was amended and sub-section 2(A) was inserted to sec. 3 of the Act, 1958. Under the letter dated 24th December, 1981, the respondent no.2 issued necessary certified and also granted exemption to the petitioner from payment of electricity duty from 1-1-1974 to 31-3-1982 on additional units of electricity generated for its own use on certain conditions. The order dated 24th December, 1981 in which the exemption was granted was sought to withdraw by the respondent no.2 vide its letter dated 10th December, 1982. The result of that withdrawal would be that the exemption from payment of the electricity duty on the additional energy generated by the petitioner for its own use will come to an end. Aggrieved by the order of the respondent no.2 dated 10th December, 1982, the petitioner preferred the Special Civil Application No. 1328 of 1983 before this Court. The main thrust of the petitioner in this Special Civil Application was that the exemption from payment of electricity duty which has been granted to the petitioner under the order dated 24th December, 1981 was sought to be withdrawn without hearing it. The respondent's counsel had given out that the petitioner shall be given an opportunity of hearing, and as such, that petition was withdrawn. The petitioner made a representation thereafter to the Collector of Electricity duty on 19th August, 1983. The Collector of the Electricity duty held that sub-section 2(A) of sec. 3 inserted from 16-4-1979 has got the prospective effect and therefore the petitioners have to obtain separate certificate. Hence, this Special Civil Application by the petitioners.

2. Shri Kaushal Thaker, the counsel for the

petitioner contended that the expansion in the plant of the petitioner society for crushing of sugar-cane was of substantial nature. The expansion of the plant was from 1000 tons per day to 1500 tons per day and then to 2600 tons per day. In the year 1968, the capacity of the plant was increased to more than one and half time then what it was initially. The licence has also been granted to the petitioner under the Industries (Development and Regulation) Act. The petitioner invested a huge amount of Rs.4.58 crores towards the expansion of the plant and machinery. The original cost of the plant was only of Rs.1.72 crores. Shri Kaushal Thaker further contended that sub-section 2A of sec. 3 as inserted to the Act, 1958 has a retrospective effect and not the prospective effect.

3. On the other hand, Shri Shukla, the counsel for the respondent contended that the certificate which has been granted to the petitioner under the order dated 24th December, 1981 has rightly been withdrawn by the respondent. Shri Shukla submitted that it is not a case where the authority decided finally regarding the entitlement of the petitioner for the benefit of exemption of the payment of electricity duty under sub-section 2A of sec. 3 of the act, 1958. Shri Shukla contended that in the order dated 19th August, 1983, a reference has been made that the provision of sub-section 2A of the Act, 1958 has got a prospective effect, but from the later part of the order, it is clear that the matter has been left open by the authority regarding the entitlement of the petitioner for the benefits under the said provision, on making of a fresh application within prescribed time as provided under that sub-section. The time limit which has been prescribed by the provision has been expired and as such, the petitioner cannot claim any benefits.

4. I have given my thoughtful consideration to the submissions made by the learned counsel for the parties. Sub-section 2A of sec. 3 of the Act, 1958 provides that where an industrial undertaking has, by installing an additional generating set started generation of additional energy for its own use, at any time, during ten years before the commencement of the Bombay Electricity Duty (Gujarat Amendment) Act, 1979, electricity duty shall not be leviable on such units of the additional energy so generated as are consumed for motive power and lighting in respect of premises used by the industrial undertaking for industrial purpose, until the expiry of such - period after the commencement as would together with the period from the date of starting

the generation not exceed ten years. From the reading of the said provision, I find some substance in the contention of the counsel for the petitioner that the petitioner may be entitled for the grant of exemption in the payment of electricity duty on the additional generating sets started earlier to coming into force of the amendment of the Act, 1979, but as I consider that the matter should be remanded back to the authority I do not consider it appropriate to express any final opinion on this question. This benefit may be available subject to the fulfillment of other conditions but that is not the point in issue in the present writ petition. The proviso which is there in sub-section 2A of sec. 3 provides that any industrial undertaking shall be entitled to exemption from payment of electricity duty under the sub-section unless it has obtained a certificate regarding eligibility for such exemption in the prescribed form by making an application therefor in prescribed manner and within the prescribed period to such officer as the State Government may by notification in official Gazette specify. In the reply, the respondents have come up with a case that on the application made by the petitioner in the year 1974, no exemption could have been granted. It has further been stated that no exemption could have been granted for the period earlier to 10th April, 1979 the day on which sub-section 2A has been inserted to section 3. These are not the matters in issue before this court. The exemption has been granted in the present case which has been withdrawn under the order impugned. In the impugned order, the respondent himself has left the matter for consideration regarding the eligibility of the petitioner to claim the exemption in sub-section 2A of section 3 of the Act, 1958 on filing of the application in prescribed form within time limit. The observations of the authority made in this respect are relevant and are extracted below:

The aforesaid sub-section 2(A) of section 3 of Bombay Electricity duty Act has got prospective effect and for which you are required to obtain a certificate, from this office by making an application within the prescribed time limit provided all the conditions laid down in the said sub-section 2(A) are fulfilled.

The finding of the authority that sub-section 2A of sec.3 of the act, 1958 has a prospective effect needs fresh reconsideration. So far as the application part is concerned, as stated earlier, in the year 1974, the petitioner moved an application, but at that time, it is

true that sub-section 2A was not inserted. The intention has to be considered and looked into and on technicalities, the relief should not be declined in case, otherwise the petitioner is entitled for the benefit as given under sub-section 2A of sec. 3 of the Act, 1958. The technicalities that the application was not filed in prescribed form and time limit may not be strictly applicable in the present case for the reason that the petitioner since 1974 was praying for the exemption and the exemption at one point of time has been granted. The substance of the matter has not been considered. The counsel for the petitioner contended that the word used in sub-section 2A of section 3 of the Act, 1958 is "has" which denotes that the intention of the legislature was to give this provision retrospective effect. I do not consider it to go on this question as in my view, the matter has to be sent back to the respondent to consider the matter afresh in accordance with law.

5. The interest of justice will be served in case this writ petition is disposed of in the terms as follows:

The petitioner in case, considers itself to be entitled for the grant of exemption from the payment of electricity duty for the period in question on the additional units of generating electricity for its own consumption, it may move a fresh application to the respondent no.2 in a prescribed form, if any, prescribed under sub-section 2A of sec. 3 of the Act, 1958 or rules framed thereunder within a period of one month from the date of receipt of certified copy of this order. The respondent no.2 is directed to decide the application of the petitioner hereafter within a period of two months from the receipt thereof. In case, the petitioner does not make an application within the period as stipulated above, then this Special Civil Application shall stand dismissed. The interim relief which has been granted by this Court in this Special Civil Application shall continue till the application filed by the petitioner is decided by the respondent no.2. In case, the petitioner does not file the application within stipulated period, this interim relief granted by this Court shall stand vacated from the date on which the stipulated period for filing of the application expires. Rule is made absolute in the aforesaid terms with no order as to costs.

zgs/-